

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

BRIAN FERGUSON,  
  
Plaintiff,

v.

Case No. 04-72743  
Hon. Victoria A. Roberts

OGLEBAY NORTON MARINE SERVICES  
COMPANY, LLC,  
  
Defendant.

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**ORDER GRANTING DEFENDANT'S MOTION  
FOR RECONSIDERATION AND DENYING PLAINTIFF'S  
MOTION TO STRIKE DEFENDANT'S MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

This matter is before the Court on Defendant's Motion for reconsideration of the Court's Order granting Plaintiff's Motion for partial summary judgment entered March 31, 2006. [Doc. 29]. Plaintiff moves to strike Defendant's Motion for reconsideration as untimely.

**II. BACKGROUND**

The facts of this case are sufficiently set forth in the Court's Order granting Plaintiff's motion for partial summary judgment and denying Defendant's motion for partial summary judgment entered on March 31, 2006. [Doc. 29].

**III. APPLICABLE LAW AND ANALYSIS**

Defendant's Motion for reconsideration is **GRANTED**. Defendant did not have an

opportunity to respond to the new issue presented for the first time in Plaintiff's Reply brief. See *Seay v. Tennessee Valley Authority*, 339 F.3d 454, 481 (6<sup>th</sup> Cir. 2003) and *Wright v. Holbrook*, 794 F.2d 1152, 1156 (6<sup>th</sup> Cir. 1986). Although Defendant's motion is untimely, the Court GRANTS it, in the interest of justice and pursuant to E.D. Mich L.R. 7.1(g).

Plaintiff's Motion for summary judgment is **DENIED**. Plaintiff failed to demonstrate that Defendant is not entitled to raise the defense of contributory negligence.

Accordingly, Plaintiff's Motion to strike Defendant's Motion for reconsideration is **DENIED**.

**IT IS SO ORDERED.**

s/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

**Dated: May 3, 2006**

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on May 3, 2006.

s/Linda Vertriest  
Deputy Clerk